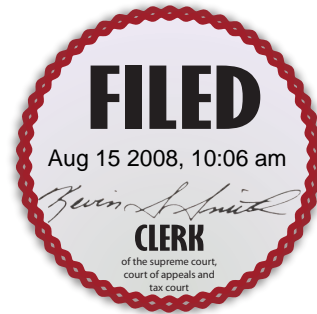


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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ERIC WAYNE WILSON,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 82A01-0711-CR-502

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APPEAL FROM THE VANDERBURGH SUPERIOR COURT  
The Honorable Mary Margaret Lloyd, Judge  
Cause No. 82D02-0608-FA-656

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**August 15, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Eric Wayne Wilson (“Wilson”) was convicted of Class B felony child molesting, Class C felony confinement, Class D felony intimidation, and Class B misdemeanor battery in Vanderburgh Superior Court. He was ordered to serve an aggregate sentence of 20 years. Wilson appeals and presents the following issues:

- I. Whether the trial court abused its discretion when it admitted Wilson’s confession at trial;
- II. Whether a subsequent prosecution after a hung jury violated the Double Jeopardy Clause of the Indiana Constitution; and
- III. Whether Wilson’s sentence was appropriate.

We affirm.

### **Facts and Procedural History**

On August 12, 2006, at approximately 10:00 p.m., ten year-old T.H. was walking down an alley when Wilson appeared. T.H. asked Wilson for help because he was afraid of a bully. In answer, Wilson removed his pants and told T.H. to perform fellatio on him in exchange for his help. T.H. refused. Wilson slapped T.H. and threatened to shoot T.H. if he did not comply. In fear for his life, T.H. complied and performed fellatio on Wilson until Wilson ejaculated. When a van drove down the alley, Wilson ran away.

T.H. went to his friend’s house, which was nearby and said that someone had been “messaging with him.” Tr. pp. 1069, 1074. T.H. described the attacker as a white male in his late teens or early twenties, wearing a gray tank-top and jean shorts. T.H. also noted that he had seen his attacker around a nearby apartment building.

The police were contacted and after the initial investigation, it was determined that Wilson had been around the apartment building that night and was a potential suspect.

Detectives Michael Sides (“Detective Sides”) and Detective Brian Turpin (“Detective Turpin”) went to Wilson’s girlfriend’s home at about 2:30 a.m. on August 13, 2006. When the detectives arrived at the home, they were initially unable to contact anyone in the house. Eventually they called the home, and the girlfriend’s father answered the door. When he asked if Wilson was in trouble, the detectives said that Wilson was not and that they merely wanted to ask him some questions.

Wilson came to the door wearing only shorts. Wilson stepped out on the porch and closed the door behind him. Detective Turpin asked if Wilson would accompany them to the police station to answer some questions. Wilson acquiesced and got in the backseat of the police car without handcuffs. On the trip to the police station, the detectives did not mention the case.

At the station, Wilson was placed in an interview room. Before the interview began, Detective Turpin read Wilson his Miranda rights and asked Wilson if he understood those rights. In response, Wilson signed a Miranda waiver form. During the subsequent interview, Detective Turpin told Wilson that the police had DNA evidence and that they had enough evidence to arrest him regardless of whether Wilson cooperated. Wilson asked if he could call his mother, and Detective Turpin said he could. About three minutes later, Wilson admitted that he had allowed T.H. to perform oral sex on him. The interview was taped and lasted less than two hours.

Later, Wilson told his girlfriend’s father that he did not molest T.H. but confessed because he simply wanted to go home and go to sleep. T.H. identified Wilson in a photo line-up and DNA found on T.H.’s shirt matched that of Wilson.

On August 14, 2006, the State charged Wilson with Class A felony child molesting. On September 15, 2006, the State added the following charges: Class A felony child molesting, Class C felony confinement, Class D felony intimidation, and Class B misdemeanor battery. On April 2, 2007, Wilson filed a motion to suppress the statements he made to the police. The trial court denied this motion on May 31, 2007.

On August 23, 2007, after a trial, the jury was unable to reach a verdict on the first count of Class A felony child molesting, found Wilson not guilty of the second Class A felony child molesting count, and found him guilty of all remaining charges. On September 14, 2007, after a second trial, the jury found Wilson guilty of the lesser-included offense of Class B felony child molesting. On September 17, 2007, the trial court sentenced Wilson on all convictions. The trial court sentenced Wilson to concurrent terms of incarceration of twenty years, four years, one and one-half years, and 180 days. Wilson appeals.

### **I. Admission of Guilt**

Wilson argues that the trial court improperly denied his motion to suppress his confession. Wilson alleges that he was illegally detained and was improperly Mirandized. He also alleges that the confession was not voluntary.

Wilson initially challenged the admission of the evidence through a motion to suppress. However, he is appealing from a completed trial, and therefore, the issue is “appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial.” Collins v. State, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), trans. denied. Our standard of review on the admissibility of evidence “is essentially the same

whether the challenge is made by a pre-trial motion to suppress or by trial objection.” Id. “We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court’s ruling. However, we must also consider the uncontested evidence favorable to the defendant.” Id. We will affirm the trial court’s ruling if it is supported by substantial evidence of probative value. Creekmore v. State, 800 N.E.2d 230, 233 (Ind. Ct. App. 2003). The State must prove the voluntariness of the confession beyond a reasonable doubt. Jackson v. State, 735 N.E.2d 1146, 1153 n. 4 (Ind. 2000).

### **A. Custody**

Wilson first argues that his confession should not have been admitted at trial because he was illegally detained. Wilson’s argument revolves around the question of when he was taken into custody and whether the detectives had probable cause at that time to take him into custody.

Generally, a person is determined to be in custody if a reasonable person in the suspect’s position would not have felt free to leave. Brabandt v. State, 797 N.E.2d 855, 862 (Ind. Ct. App. 2003). “Whether a person was in custody depends upon ‘objective circumstances,’ not upon the subjective views of the interrogating officers or the subject being questioned.” Id. A custodial interrogation is defined as “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” Miranda v. Arizona, 384 U.S. 436, 444 (1966).

When the detectives arrived at Wilson’s girlfriend’s house, they told the girlfriend’s father that Wilson was not in trouble. After Wilson came to the door, he

stepped outside and shut the door behind him. The detectives then asked Wilson to accompany them to the station. Wilson agreed to go to the station with the detectives. He was not placed in handcuffs, and he entered the police cruiser of his own accord.

On the drive to the station, the detectives and Wilson did not discuss the case. When they arrived at the station, Wilson was put in a room for questioning and the door was left open. Although Wilson was in a part of the station that was restricted access, he was never told he could not leave. Prior to his confession and after he had waived his Miranda rights, he asked to call his mother. He spoke with his mother and then confessed.

Under these facts and circumstances, a reasonable person would not have thought that he or she was in custody. Prior to the interview, Wilson was not in custody and was not being illegally detained.<sup>1</sup>

## **B. Miranda Rights**

Wilson next argues that his confession should not have been admitted at trial because he was improperly Mirandized. Wilson has failed to cite any authority that would support his assertion that the reading of the Miranda rights by a police officer followed by questions regarding the understanding of those rights is insufficient. Detective Turpin read Wilson his Miranda rights and then asked Wilson if he understood those rights. Wilson signed the waiver in response to that question. Wilson's affirmative action in signing the Miranda rights waiver is sufficient to demonstrate his understanding.

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<sup>1</sup> Since we have determined that Wilson was not illegally detained or arrested, there is no need to address Wilson's argument regarding the admissibility of a confession after an illegal arrest.

### **C. Voluntariness of Confession**

Finally, Wilson argues that his confession should not have been admitted at trial because it was not voluntarily given. As noted above, Wilson was not in custody at the time he made his incriminating statements. The admissibility of an incriminating statement is not determined solely by application of the Miranda rules. Brabandt, 797 N.E.2d at 863. When a defendant is not in custody, an admission may be excluded because it was involuntarily made. Id. The Fourteenth Amendment to the United States Constitution incorporates the Fifth Amendment privilege against self-incrimination. Id. A suspect's statement must be voluntary to be admissible consistent with these provisions. Id. A confession is voluntary if, in light of the totality of the circumstances, the confession is the product of a rational intellect and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics that have overcome the defendant's free will. Id. The critical inquiry is whether the defendant's statements were induced by violence, threats, promises, or other improper influence. Id. When reviewing a challenge to the trial court's decision, we do not reweigh the evidence but examine the record for substantial, probative evidence of voluntariness. Kahlenbeck v. State, 719 N.E.2d 1213, 1216 (Ind. 1999).

Wilson points to three issues that he believes undermines the voluntariness of his confession. First, Wilson argues that he was not told of the reason for the interview until after he signed the waiver of rights. Yet, he admits that this alone is not fatal to the validity of the Miranda rights waiver. Br. of Appellant at 18. Second, Wilson argues that Detective Turpin used lies and false promises to induce Wilson to admit guilt. He also

admits that the types of statements used by Detective Turpin would not render the confession inadmissible. Br. of Appellant at 18-19. Third, he points to Detective Turpin's statements that Wilson should admit guilt or he would be open to public outrage. While Wilson states that this is "territory which the law condemns," he cites no case that holds that this type of interview technique is not allowed and that a confession that resulted from this type of interview is inadmissible. Br. of Appellant at 19.

Wilson was fully advised of his Miranda rights, indicated his understanding of them, and was not interrogated for an inordinate amount of time. See Kahlenbeck, 719 N.E.2d at 1217-18; Carter v. State, 490 N.E.2d 288, 290-91 (Ind. 1986). In addition Wilson was allowed to call his mother during the interrogation. Under the totality of the circumstances, Wilson's confession was voluntary.

## **II. Double Jeopardy**

Wilson argues that he is being subjected to double jeopardy because he was retried on a count that, in the original trial, ended in a hung jury. In Wilson's first trial, the jury was unable to reach a verdict on one of the Class A felony child molesting charges. In Wilson's second trial, he was convicted of the lesser-included Class B felony child molesting. As a general rule, "[a] defendant who is retried following a hung jury is not placed in jeopardy twice for the same offense because the initial jeopardy that attaches to a charge is simply suspended by the jury's failure to reach a verdict." Buggs v. State, 844 N.E.2d 195, 200 (Ind. Ct. App. 2006), trans. denied.

Wilson attempts to argue several different theories. First, he argues that his conviction for the Class B felony child molesting at the second trial somehow implies an



acquittal of the Class A felony child molesting at the first trial. This argument is nonsensical. The conviction for a lesser-included offense is an acquittal of the greater offense and necessarily precludes the retrial of the greater offense in a subsequent trial. See Indiana Code § 35-41-4-3(a). In this case, the first trial did not result in an acquittal or conviction on Count I but in a hung jury, so this theory would not apply.

Second, Wilson argues that the facts that supported Count I were used to form the basis of his convictions in Counts III, IV, and V. While Wilson does cite to the United States Constitution, Indiana State Constitution, various statutes, and case law, he does not explain which facts were used to support his convictions and which facts fell afoul of double jeopardy. Additionally, Wilson fails to explain how a single criminal episode factors into a determination of whether double jeopardy attaches. “A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.” Lyles v. State, 834 N.E.2d 1035, 1050 (Ind. Ct. App. 2005), trans. denied; Ind. Appellate Rule 46(A)(8)(a) (2008). Thus, we conclude that Wilson’s issue is waived for appeal.

### **III. Inappropriate Sentence**

Wilson’s final argument is that under the circumstances of this case, his sentence was inappropriate. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court’s decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2007); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied. “[A] defendant must persuade the appellate court that his or her sentence

has met the inappropriateness standard of review.” Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007). Additionally, “[s]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion.” Id. at 490.

The nature of the offense in this case is particularly heinous. Wilson forced a ten-year old boy to perform oral sex on him through force and threat of force. The boy sought Wilson’s help, but Wilson took advantage of the child for his own gratification. Additionally, while this may be Wilson’s first adult criminal offense, it is a Class B felony child molesting. While the trial court determined that Wilson’s age, eighteen, was a mitigating factor, the fact that he committed such a crime at such a young age is disturbing, to say the least. Accordingly, we conclude that Wilson’s twenty-year sentence is not inappropriate in light of the nature of the offense and the character of the offender.

### **Conclusion**

Wilson was not taken into custody until after he confessed and was arrested. He was properly advised of his Miranda rights, and his confession was voluntary. Wilson was not subjected to double jeopardy after he was retried after a hung jury. Finally, Wilson’s twenty-year sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed

MAY, J., and VAIDIK, J., concur.